IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4390 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JALAMSINH K BAROD

Versus

REGIONAL DIRECTOR

Appearance:

1. Special Civil Application No. 4390 of 1993

MS SUDHA R GANGWAR for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/08/2003

ORAL JUDGEMENT

Heard learned advocate Ms.M.N.Shaikh on behalf of the learned advocate Ms.Sudha Gangvar for petitioner and learned advocate Mr.H.S.Munshaw for the respondents.

#. In the present petition, the petitioner has challenged the award passed by the labour court, Baroda in Reference No.74 / 1986 dated 9th June, 1989 wherein the labour court, Baroda has rejected the Reference filed by the workman. This Court has issued Rule on 9th July, 1993. Learned advocate Ms.Shaikh for the petitioner has submitted that the respondent Corporation has passed punishment order which is harsh and unjustified considering the gravity of misconduct and that order of punishment has been passed without giving any reasonable opportunity to the petitioner. Therefore, she submits that the labour court has committed gross error in rejecting the Reference filed by the petitioner workman. She also submitted that the labour court has failed to exercise the powers under Section 11-A of the I.D.Act, 1947 and therefore also, the labour court has committed gross error in rejecting the Reference. Except the contention referred to above, no other submission made by the learned advocate Ms.Shaikh while pleading the case of the petitioner before this Court.

#. Learned advocate Mr.Munshaw for the respondent Corporation has submitted that the labour court has rightly appreciated the facts and come to the conclusion that the petitioner workman has committed gross case of dishonesty and misappropriation and / or fraud with the property of the Corporation and in such cases when misappropriation is committed by the workman while working on the post of Conductor and such misconduct is found to have established then, there is no other option with the Corporation except to dismiss such workman working on the post of Conductor. He also submitted that the post of Conductor is a post with confidence and in case of misappropriation committed by the workman, the Corporation has lost confidence from the petitioner workman and that aspect has been rightly appreciated by the labour court and rejected the Reference. He also submitted that before passing the dismissal order against the petitioner workman, chargesheet was served and after considering the reply, departmental inquiry was completed and ultimately, show cause notice was served and dismissal order has been passed. Therefore, according to learned advocate Mr.Munshaw, reasonable opportunity in all respects were given to the petitioner workman and thereafter, the order of dismissal has been passed which is legal and valid and therefore, the labour court has rightly confirmed the same. He, however, also submitted that this Court has limited jurisdiction under Article 227 of the Constitution to interfere with the award of the labour court and therefore, no interference is

required by this Court. He also emphasized that punishment of dismissal is not only based upon misconduct in question but also, based on the bad past record of the workman.

#. I have considered submissions made by the learned advocates for the parties. Considering the fact that the workman petitioner herein was working as Conductor in Godhara Division for eight years and he was dismissed on 4th January, 1984 when the petitioner was on route on 5th February, 1982 from Shrinathdwara - Surat and on that occasion and his bus was checked at Patiya, where it was found that from certain passengers, fare was collected by the petitioner workman and short tickets were issued by the petitioner and in case of some of the passengers, written tickets were issued by the petitioner conductor. Ultimately, checking staff has made report to the competent authority and thereafter, chargesheet was served to the petitioner which was replied by the petitioner on 27th March, 1982 and thereafter, the departmental inquiry was initiated and personal hearing was fixed on 5th February, 1983, on that occasion, reporter was examined and opportunity was given to the petitioner workman to examine any defence witness or to produce necessary documents. Ultimately, the competent authority has submitted report on 11th February, 1982 and come to the conclusion that all the charges levelled against the petitioner workman found to be proved. Thereafter, show cause notice was served on date 30th May, 1983 and reply was given by the petitioner workman. Thereafter, considering the reply, ultimately, the respondent corporation has passed the order on 28th February, 1984 and on that basis, the labour court has considered the papers of departmental inquiry vide Exh.9 and deposition of the petitioner workman vide Exh.10. Before the labour court, the Advocate of the petitioner has made request to the labour court to consider the matter under Section 11-A of the I.D.Act, 1947. After considering submissions of the learned advocate on behalf of the petitioner, the labour court has come to the conclusion that apparently there was misappropriation of Rs.22.35 ps. by the petitioner and if the bus was not checked then it could be presumed that such amount might have been misappropriated by the petitioner workman and thereafter, the labour court has considered the past bad record and certain decisions of this Court also considered by the labour court. Ultimately, the relevant decisions which has been cited by both the sides and the labour court has come to the conclusion that even if the case of the petitioner workman could not be recommended for any other alternative post, means, for any other non

sensitive post of Helper as per the decision of this case in case of G.S.R.T.C. v. Jamnadas reported in 1982 G.L.H. 1057, is also not helpful in view of the recent decision of this Court wherein it is held that when misappropriation is found to be proved, no relief can be given in favour of the workman - conductor. Therefore, the labor court has come to conclusion that if any relief has been given to the petitioner, it amounts to encouragement to misappropriation practice to the employees and therefore, the labour court has rejected the Reference.

#. In may also be appreciated that in case of misappropriation committed by the Conductor while on duty as Conductor on route, recently, the Apex Court has considered this aspect and held that in such case, there is no other punishment except dismissal. Looking to the facts and circumstances observed in the award and observations made by this Court referred in the award, reasonable opportunity was given to the petitioner by the Corporation and the labour court has examined the matter under Section 11-A of the I.D.Act, 1947. But according to the labour court, the punishment which has been imposed by the Corporation, looking to the gravity of misconduct and past record, is just, proper and justified and the same cannot be considered to be unjustified and therefore, labour court has not interfered with the punishment imposed by the Corporation while exercising the powers under Section 11-A of the I.D.Act, 1947.

#. Recently also, the Apex Court has considered the case of the Conductor who has committed misconduct of misappropriation in case of REGIONAL MANAGER, RSRTC V. GHANSHYAM SHARMA reported in 2003 Supreme Court Cases [L & S] 714. The relevant observations made by the Apex Court in above referred decision are referred to as under :-

"2. The respondent in the present case was employed as a conductor by the appellant. On more than one occasion, he was punished having been chargesheeted on the ground of not issuing the tickets to the passengers. In the instant case, it was found that he was carrying 23 1/2 passengers without ticket and an inquiry was conducted and he was removed from service.

3. On a reference being made, the labour court invoked its jurisdiction under Section 11-A and while upholding the finding that the respondent was guilty of misconduct it directed

the respondent's reinstatement with continuity of service but without backwages. The learned Single Judge of the High Court set aside the award which decision has been reversed by the Division Bench. Hence this appeal.

4. This Court in Karnataka SRTC v. B.S.Hullikatti has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or a of gross negligence and such conductor were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court was firmly of the opinion that in cases like the present, orders of dismissal should not be set aside.

5. Furthermore, we agree with the observations of the Single Judge in the present case that the labour court was not justified in interfering with the punishment of dismissal. Though under Section 11-A the labour court has jurisdiction and powers to interfere with the quantum of punishment, however the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect the fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then, it will be misplaced sympathy to order his reinstatement instead of dismissal.

6. For the aforesaid reasons, this appeal is allowed, the order of the Division Bench is set aside and that of the Single Judge restored. No Costs."

#. Considering the observations made by the Apex Court, it is held that during the checking if it is found that the bus conductor was either had not issued the tickets to the passengers more than in number or issued the tickets of less rate amount than proper rate knowingly full well the correct fare to be charged, it is the responsibility of the bus conductor to collect the fare from the passengers and deposit the same with the Corporation and if the act of conductor is against the interest of the Corporation to have personal gain, it would amount to misconduct relating to misappropriation

and dishonesty and the same can be said to be gross negligence on the part of the workman conductor and such workman, as per the observations of the Apex Court, should not be retained in service.

Therefore, considering recent decision of the Apex Court and the finding given by the labour court that charge of misappropriation is found to be proved on the basis of the record of the inquiry papers and that is how the powers under Section 11-A of the I.D.Act, 1947 has not been exercised in favour of the workman, which according to my opinion, the labour court is right in arriving its conclusion inasmuch as the punishment of dismissal against conductor who has committed dishonesty and misappropriation of the fund of the Corporation, there was no other option or any other approach in such matter could be possible except to pass the order of dismissal against such delinquent conductor. Therefore, according to my opinion, the labour court has not committed any error while passing such award and the submissions made by the learned advocate Ms.Shaikh are not accepted accordingly.

In light of above observations and discussion, there is no substance in this petition and the same deserves to be rejected and it is rejected accordingly.

Rule stands discharged with no order as to costs.

Date : 7.8.2003 [H.K.Rathod, J.]

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